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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-639

CITY OF HARTFORD, on behalf of itself and its inhabitants, Miriam Jordan and Fannie Mauldin,

Petitioners,

vs.

The TOWNS OF GLASTONBURY, WEST HARTFORD and EAST HARTFORD,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RALPH G. ELLIOT
Alcorn, Bakewell & Smith
One American Row
Hartford, Connecticut 06103
Counsel for Respondent Town of Glastonbury

JOHN J. LANGENBACH
Town Hall
West Hartford, Connecticut 06107
Counsel for Respondent Town of West Hartford

JAMES A. WADE
799 Main Street
Hartford, Connecticut 06103
Counsel for Respondent Town of East Hartford

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Question Presented

Whether on the facts of this case these particular plaintiffs—the City of Hartford, Miriam Jordan and Fannie Mauldin—had standing to bring this particular suit.

Statement of the Case

On August 22, 1974, Congress enacted what came to be known as the Housing and Community Development Act of 1974 (hereinafter, "the Act"). This suit deals with a dispute arising out of applications for funds made pur-

suant to Title I of that Act, 42 U.S.C. §§ 5301-5317, entitled "Community Development". The funds provided under this Title could be used for a wide range of community development activities. Significantly, however, *the construction of low or moderate income housing was not an eligible activity.* Another significant feature of the Act was its return to the individual communities of responsibility for ascertaining their own local needs and devising programs to meet them on a local level.

One aspect of this program was to be the Housing Assistance Plan, drawn up by the applicant town as part of its application. 42 U.S.C. § 5304(a)(4). The particular portion of that provision which is the focus of this suit is the "expected to reside" computation set forth in 42 U.S.C. § 5304(a)(4)(A), wherein the applicant was required to submit a plan which

> (A) accurately surveys the condition of the housing stock in the community and assesses the housing assistance needs of lower-income persons (including elderly and handicapped persons, large families, and persons displaced or to be displaced) residing in *or expected to reside* in the community. (emphasis supplied)

This "expected to reside" category was an innovation of the Act. Its intent is best expressed in the Report of the House Committee on Banking and Currency (page 3a of the Addendum to the main brief in the Court of Appeals):

> Clearly, those already employed in the community can be expected to reside there. Normally, estimates of those expected to reside in a particular community would be based on employment data generally available to the community and to HUD. However, in many cases, communities should be able to take into account planned employment facilities as well, and their housing assistance plans should reflect the additional housing needs that will result.

"Lower income persons" were defined in HUD's Instructions for completing the application (Appendix below, page A337) as "families whose income does not exceed 80 percent of median income for the area, with adjustments upward or downward for larger or smaller families, or other limits established by HUD because of construction cost levels or for other reasons".

The Court of Appeals—whose opinions are printed at 561 F. 2d 1032 and 1048—succinctly summed up the essence of the "expected to reside" component in its *en banc* opinion (Appendix to Petition A8) as follows:

> The expected to reside figure is not a goal for the future which communities are required to satisfy, but merely a prediction of what is going to happen. It is a device used to plan for future population changes, not a device for achieving them. A modification of the expected to reside figure would have no greater impact on the number of future residents than a modification of tomorrow's weather forecast would have on tomorrow's weather.

The "expected to reside" feature reflected the premise of the Act that people like to live in the same town where they work. Hence, the Act established a statutory presumption that those "lower income persons" who work in a given town must be "expected to reside" there, and the town should devise its community development projects with them in mind.

There is no allegation in the case that the towns did anything but what HUD told them to do. They (including Hartford) submitted their applications and those applications began the detailed processing route for such applications. As HUD began processing these applications in the spring of 1975, however, it became apparent that in the six or eight months since enactment of this innovative "expected to reside" concept, both HUD and the communities across the United States lacked the data or the methodology to compute meaningful, intelligent figures.

Accordingly, on May 21, 1975, Assistant HUD Secretary David O. Meeker issued what has since been called the "Meeker Memorandum", which is set forth in the Court of Appeals Appendix at A139. This memorandum, among other things, permitted applicants to submit and have accepted for HUD processing first-year applications without any "expected to reside" computation upon the applicant's indication of what steps the applicant intended to take to identify a more appropriate needs figure with its second-year application (the Act contemplated three one-year applications). HUD's Hartford office determined that for Connecticut there was insufficient data for HUD to compute meaningful "expected to reside" figures for Connecticut towns. Accordingly, both Hartford and the defendant towns submitted "0" figures (except for East Hartford, which had submitted its application before issuance of the Meeker Memorandum and had included an "expected to reside" figure of 131).

The applications were processed, they were approved, and the plaintiffs sued HUD because the towns had not included any "expected to reside" figures (except for East Hartford, whose figure of 131 plaintiffs disputed as inadequate).

There was a full hearing on the merits, after which the District Court ruled that plaintiffs had standing and that an injunction ought to issue barring disbursement of the funds to the seven towns until they had amended their applications to include an "expected to reside" figure. While the appeal was pending in the Second Circuit five of the seven towns (including respondents Glastonbury and West Hartford) revised their applications, HUD approved them, and petitioners have informed the District Court that they have no objection to disbursement of the funds. Respondent East Hartford, having originally provided an "expected to reside" figure of 131, has not revised that figure and deems it sufficient to comply with the requirements of law.

Plaintiffs in this case are the City of Hartford, a municipal corporation, and two persons residing in Hartford. Those two persons do not *reside* in any of the defendant towns nor do they claim they want to reside there. They do not *work* in any of the defendant towns nor do they claim they want to work there. There is no claim and no evidence that their present housing in Hartford is anything but adequate and at least standard. They claim and have given evidence of no connection between them and any of the defendant towns.

ARGUMENT

These Plaintiffs Lack Standing to Bring This Suit on These Facts

Respondents submit, and the Court of Appeals has agreed, that on the facts of this case these particular plaintiffs have failed to sustain their burden of proving they have standing to bring this suit seeking this relief. They submit that petitioners cannot meet any of the criteria established by this Court in Rule 19(b) of its Rules for determining whether to grant a petition for a writ of certiorari:

> Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

An appropriate starting point is the state of the law on standing against which this issue must be decided.

A. The Law

The law on standing to sue has been recently restated in two opinions of this Court: *Association of Data Processing Service Organizations, Inc.* v. *Camp,* 397 U.S. 150 (1970)—hereinafter, *Data Processing;* and *Warth* v. *Seldin,* 422 U.S. 490 (1975)—hereinafter, *Warth. Data Processing* sets forth two tests, both of which plaintiffs bear the burden of satisfying, by which to measure plaintiffs' right to invoke the assistance of the courts: (1) "the question whether the interest sought to be protected by the complainant is arguably within the zone of the interests to be protected or regulated by the statute or constitutional guarantee in question" *Id.* at 153; and (2) "whether the plaintiff alleges that the challenged action has caused him injury in fact, economic or otherwise" *Id.,* at 152.

Warth, decided but two years ago and prior to the decision below in this case, went considerably beyond the skeletal outlines of standing described in *Data Processing* in expanding upon the requirements plaintiffs must satisfy. These can be summarized in three sections of that opinion:

> Petitioners must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent. Unless these petitioners can thus demonstrate the requisite case or controversy between themselves personally and respondents, "none may seek relief on behalf of himself or any other member of the class" *O'Shea* v. *Littleton,* 414 U.S. 488, 494 (1974). See e.g., *Bailey* v. *Patterson,* 369 U.S. 31, 32-33 (1962).
>
> *Id.,* at 502

But there remains the question whether petitioners' inability to locate suitable housing in Penfield reason-

ably can be said to have resulted, in any concretely demonstrable way, from respondents' alleged constitutional and statutory infractions. Petitioners must allege facts from which it reasonably could be inferred that, absent the respondents' restrictive zoning practices, there is a *substantial probability* that they would have been able to purchase or lease in Penfield and that, if the court affords the relief requested, the asserted inability of petitioners will be removed. *Linda R. S.* v. *Richard D.,* 410 U.S. 614 (1973).

> *Id.,* at 504 (emphasis supplied)

We hold only that a plaintiff who seeks to challenge exclusionary zoning practices must allege specific, concrete facts demonstrating that the challenged practices harm *him,* and that he personally would benefit in a trangible way from the courts' intervention. Absent the necessary allegations of demonstrable, particularized injury, there can be no confidence of "a real need to exercise the power of judicial review" or that relief can be framed "no broader than required by the precise facts to which the court's ruling would be applied." *Schlesinger* v. *Reservists to Stop the War,* 418 U.S., at 221-222.

> *Id.,* at 508

In deciding the question of plaintiffs' standing after a hearing on the merits (as opposed to a motion to dismiss) neither the trial court nor reviewing courts may lift from plaintiffs their burden of proof on the question by accepting as true all material allegations of the complaint, and construing the complaint in their favor. *Id.,* at 501. The court below and this court, therefore, must measure plaintiffs' standing by the evidence adduced, not by adopting either unwarranted deductions of fact or legally conclusory allegations. Indeed, even on a motion to dismiss, the court would *not* be expected to accept as true or construe in favor of plaintiffs any allegations except *material* alle-

gations of *fact*. *Cruz* v. *Beto*, 405 U. S. 319, 322 (1972); *Associated Builders, Inc.* v. *Alabama Power Co.*, 505 F. 2d 97 (CA-5; 1974); *Avins* v. *Magnum*, 450 F. 2d 932 (CA-2; 1971); see generally 2A Moore, *Federal Practice*, pp. 2265-2269, § 12.08 (Second Edition).

Also, it should be borne in mind that the standing of plaintiffs with respect to one defendant may not suffice as standing with respect to other defendants. This Court has stated that "Congress may create a statutory right or entitlement the alleged deprivation of which can confer standing to sue even where the plaintiff would have suffered no judicially cognizable injury in the absence of statute." *Linda R. S.* v. *Richard D.*, 410 U.S. 614, 617, n.3 (1973). The natural corollary of that has at least by implication been recognized: while those statutes may confer standing upon plaintiffs to whom statutory duties are owed as to defendants owing those statutory duties, that standing does not necessarily cover defendants not chargeable by statute with discharging such duties. *Evans* v. *Lynn*, 537 F. 2d 571, 589 (CA-2; 1976), cert. den. —— U.S. —— (1977). And with respect to those statutory duties to support standing there must be an allegation and showing that the defendant owing the duty "consciously and expressly adopted a general policy [of nonenforcement] which [is] in effect an abdication of its statutory duty." *Adams* v. *Richardson*, 480 F. 2d 1159, 1161 (C.A.D.C.; 1973—*en banc, per curiam*).

All of these principles of standing have recently been affirmed once again in *Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 38 (1976); and in *Village of Arlington Heights* v. *Metropolitan Housing Dev. Corp.*, 45 U.S.L.W. 4073, 4076 (1977).

Applying these general principles of standing to the facts of this case, the question to be answered in determining standing becomes: have plaintiffs alleged and shown specific, concrete facts demonstrating that what the federal

defendants and each of the defendant towns did deprived them personally of a specific statutory right or entitlement affirmatively owed to them personally by each defendant to low and moderate income housing; and that if each of the defendants had refrained from doing what they did, these plaintiffs would have been able to find low and moderate income housing; and that if the court affords these plaintiffs the relief they seek against these defendants, their asserted inability to find low and moderate income housing will be removed?

B. The Relief Petitioners Sought

Petitioners have made much of the claim that their standing is based on the possibiilty that some of the HUD funds originally allocated to the seven towns would be *re*allocated to Hartford if they failed to comply with the Court's injunction and to revise their "expected to reside" figures. A brief answer to *this* claimed standing basis is, of course, that it depends *not* upon the relief petitioners sought but rather upon the failure, the *in*effectiveness, of that relief.

The plaintiffs in this case did not seek the reallocation of defendants' funds to Hartford. Plaintiffs did not need any more money. Hartford had already been granted over $10,000,000 under this same Act, filing the same kind of application as did the defendants, with the same "0" expected to reside figure.

Hartford's interest, therefore, was not in shifting more funds to Hartford. Hartford wanted the towns to have the money, but to use it only in ways Hartford approved. Hartford thus wanted to control the use by its neighbor towns of funds they received from HUD. That was somehow considered to serve Hartford's purposes better than having the money to spend in Hartford itself. The situation thus is remarkably similar to that which was found to be so in *Evans*, at 598: "[plaintiffs] are invoking the Court's jurisdiction *solely* to impose upon the [defendants] priorities which the [plaintiffs] favor."

Consistent with that desire, therefore, the relief plaintiffs sought was that the Court "preliminarily and permanently enjoined the defendants [HUD and its personnel, the only defendants plaintiffs sued; HUD brought in the towns as additional parties defendant] from disbursing or transferring any funds pursuant to the seven grant applications heretofore set forth until such time as said communities submit to the defendants appropriate documents indicating compliance with the provisions of 42 U.S.C. 5301, 42 U.S.C. 3608(d)(5), 42 U.S.C. 2000(d)" Court of Appeals Appendix, A 26-27.

Based upon that prayer for relief, we turn to the question of what benefits *plaintiffs*—these particular plaintiffs—could hope to derive from this suit. How *personally* have *these* plaintiffs been injured by what each of the defendants has done? What is the connection between the injury plaintiffs demonstrate (if any) and the infractions (if any) of these defendants? Have plaintiffs demonstrated, at their trial on the merits, that absent these infractions by defendants they would not have suffered these particular, concrete, personal injuries? How, given the relief they seek in their complaint, will the City of Hartford and the two individual plaintiffs be benefited "in a tangible way from the court's intervention"? *Warth* v. *Seldin*, 422 U.S. 490, 508 (1975).

C. What Tangible Benefits Might Hartford Receive?

1. If The Towns Altered Their "Expected To Reside" Figures

If the seven towns were now to alter their "expected to reside" figures, how would the plaintiff City of Hartford be benefited in a tangible way? It must be recalled that the "expected to reside" figure is an estimate of the number of lower income people (as defined in HUD regulations) who *now work* or because of planned employment facilities will *probably be working* in town, a percentage

of whom would be "expected to reside" in the town where they work. It must also be remembered that the purpose of that figure is not to set the floor for the number of homes that will be built in town, for those jobs might not materialize and therefore these people would no longer be "expected to reside" in town under the Act. It must also be remembered that no part of these Title I funds may be used to build housing. These funds may only be used for community development purposes; and the "expected to reside" figure is but one part of a housing assistance plan component designed to estimate the number and type of people the town must keep in mind in devising its community development plans, so as to ensure that these plans will be of maximum benefit to these people when, as and if they move into town (or remain in town, if already there).

In addition to the legal impossibility of using any Title I funds to build housing—whether in the seven towns or in Hartford—it should also be noted that the uncontradicted testimony of the HUD Area Director at trial was that all of the Title II funds that *could* be used for housing construction had already been allocated and none was available. Hence, the finding of the Court of Appeals (Appendix to Petition, A5):

> A community's estimate of the number of low-income persons expected to reside within its borders has never been a self-fulfilling prophecy. The figure entered on a community's application does not alter its future population, but merely predicts it. It is theoretically possible for an expected to reside figure to influence the future availability of low-income housing in a given community, because federal housing assistance subsidies[1] are allocated to communities based in part on the anticipated needs reflected in their housing assistance plans. *See* Title II of the Housing and Community Development Act of 1974 § 213(d)(1), 42 U.S.C. § 1439(d)(1). In this case, however, the housing as-

sistance plans submitted by the defendant towns fully utilized all available Title II funds. Therefore, even if the seven defendant communities had revised their expected to reside figures upward, no additional housing subsidies would have been obtained, because no additional funds were available.

Thus, first of all, if as petitioners prayed for in their complaint the towns amended their applications and included "expected to reside" figures satisfactory to Hartford, Hartford would have successfully foreclosed the possibility that *it* would get any more funds from HUD through reallocation. If the Court granted Hartford the relief it sought, Hartford would get no money.

Second, if the towns amended their applications as Hartford wants, it would not cause the slightest increase in or improvement of the housing stock of Hartford.

Third, it would not necessarily cause any decline in Hartford's expenditures for welfare or for housing subsidies. In the first place, no new housing would be built in the towns with this Title I money; that would be illegal. And all the Title II funds were already spoken for. In the second place, the "expected to reside" estimate is just that—an estimate for community development planning purposes—and does not commit the town in the future to build that number of houses. Indeed, as recent economic history all too starkly reveals, were the planned employment facilities on which the figure was based suddenly to evaporate and companies decide not to build or expand, those "expected to reside" under the Act would no longer be expected to do so because they would have no jobs inducing them under the Act to move into town; and hence, presumably, the housing would not be built.

Assuming, however, that housing is built, jobs materialize, and the "expected to reside" figure becomes converted in time into a "new residents" figure, that presumably would have no effect (at least none demonstrated at trial) on Hartford's welfare or housing subsidy rolls. For by definition those who have moved from Hartford to the neighboring town where they work have *jobs* there. If they have jobs, if they are employed, *that* fact, and not the sites of their homes, would presumably remove them from the welfare and housing subsidy rolls; so that even if they continued to live in Hartford their employment status would be the determining factor, not that they were "expected to reside" elsewhere.

Even if these persons, though employed, did receive city welfare and city housing subsidies, there is no reason (and no evidence at trial) to conclude that their departure to neighboring towns would decrease the city rolls unless it can be found (and there was no evidence of this, either) that their places will not be taken by new births; by the natural inward migration of lower income people into Hartford to fill vacated premises; and, significantly, by the movement *into* Hartford of lower income people who *work* in Hartford and therefore, under the Act, would be "expected to reside" in Hartford. For "expected to reside" is not a one-way street running out of Hartford. The Act was not designed as an invitation to mass emigration from Hartford. It was premised on the job connection—that lower income people probably want to live where they *work*. And if they work in Hartford—at its large new Civic Center complex, or its new federal post office on Interstate 91, or at its new regional American Airlines office, or as a result of the residency ordinances requiring municipal employees to live in Hartford—they presumably must be "expected to reside" in Hartford, and Hartford under the Act must provide for them.

To say that Hartford's welfare and housing subsidy rolls would decline is also to assume (and there was no evidence of this, either) that the "expected to reside" figures for the neighboring towns would in fact consist of

Hartford residents, and those now on city welfare or housing subsidies at that, as contrasted with the distinct possibility that many of these people would be drawn from Willimantic, Bristol, Middletown, and other cities near these neighboring towns.

And finally, if the towns amended their applications, that would have no tangible, demonstrable effect on the nature, quality or number of community development projects Hartford would plan with its ten million dollars.

2. If HUD Had Rejected The Original Applications

Passing over the plaintiffs' limited prayer for relief and *Warth's* test of standing that plaintiffs must show a tangible personal benefit *from the court's granting of that relief,* it has been suggested in this case that Hartford was "injured in fact" because had HUD *originally* rejected the towns' applications, their funds would have been reallocable and Hartford *might* successfully have applied; and that that, if so, satisfies Hartford's standing.

This suggestion flies squarely in the face both of *Warth,* as set forth above, and of certain uncontested facts. First, HUD *could not* have denied the applications because they were filed in accordance with its own instructions. All it could have done was to rescind those instructions and ask the towns to resubmit their applications. *That* would not have made the funds reallocable. Even the District Court found the towns merely to have accepted an option HUD gave them; *HUD* was found to be at fault, not the towns. The fault was its granting of the option in the first place.

Second, nowhere in its complaint does Hartford claim it wants the money to be reallocated. Its prayer for relief does *not* seek rescission of the grants to the towns, thus arguably making the funds reallocable. Hartford wants the *towns* to have the funds, but after making "proper" application and for purposes approved by Hartford. Thus, the very relief Hartford prays for in the

complaint eliminates the possibility that the funds will be reallocable, and gives point to the Court's observation in *Evans* that "The link between the ill allegedly suffered and the remedy requested is so tenuous as to approach the non-existent". *Id.,* at 595.

Third, reallocation of Title I funds is governed by HUD regulations which limit their availability *only* to certain categories designated "urgent needs" (See 40 Federal Register No. 178, September 12, 1975). Petitioner City of Hartford has never either alleged or shown that it has *any* such urgent needs to be eligible for reallocation of funds originally allocated to the seven towns. Indeed, HUD in its first amicus brief in the Court of Appeals disclosed that in June of 1976, Hartford had put out a "feeler" for funds and HUD had indicated for just these reasons that none would be available. Thus, Hartford's one attempt post-judgment to bootstrap itself into an *ex post facto* standing failed.

Fourth, the Court ignores the uncontroverted testimony of the defendant Area Director that Hartford by law was—in September, 1975—already too late to apply for reallocated funds.

Thus, the petitioners' prayer for relief which eliminates the precondition for reallocation *plus* the absence of the prerequisite "urgent needs" *plus* the time bar of the regulations places Hartford squarely in the situation noted by the Second Circuit in *Evans*—and indeed, in a worse position:

> They claim only that, had the grants not been approved, the monies could conceivably have gone to some other, *totally imaginary* project in the County which *might* have had the result of making more housing available to them. *Id.* at 595.

Here, the possibility of reallocation (especially in light of the prayer for relief) is even less conceivable, and the

"urgent needs" are no less "totally imaginary." And this being so, there is no way, either, that the *individual* plaintiffs could gain standing on this quicksand base for "tangible benefits" from reallocation. There is not a scintilla of evidence in the record to support it.

3. If The Towns Fail To Amend Their Applications

Much the same arguments compel rejection of the idea that the towns' failure to amend their applications would create some tangible benefit to the City of Hartford. The *failure* of the towns to amend would deny Hartford the one thing its prayer for relief sought: to compel the towns to take HUD money and use it as Hartford chose. There could be no clearer indication that this was Hartford's goal and purpose than that it eschewed seeking the relief one would naturally have expected: a court order rescinding HUD's approval, declaring the town's funds forfeit, and ordering reallocation of those funds among applicants. That Hartford belatedly indicates a willingness, if all else fails, to consider applying for these funds if they become available is, in light of its purpose and prayer for relief, hardly the stuff that standing is made of.

Also, as mentioned above, Hartford would be competing with many other towns (see "Standard Metropolitan Statistical Areas", Rev. Ed. 1975, Ex. Office of President, OMB) in the SMSA for those reallocable funds—even assuming that its failure to apply by September of 1975 as other towns had did not bar its application for these first year funds—and would be limited in the uses to which it could put those funds to "urgent needs" as defined in HUD regulations. There was no claim in the complaint or evidence at trial that Hartford had any such "urgent needs". Indeed, as noted above, Hartford's belated June, 1976 "feeler" for funds and HUD's indication of disapproval, is ample demonstration that no such needs exist.

As again succinctly summarized by the Court of Appeals (Appendix to Petition, A9):

> Much has been made in this case of the fact that if the defendant communities fail, or refuse to comply with the Act, their grants will be reallocated. This, it is claimed, will lead to the possibility that the plaintiffs would benefit from the reallocation of funds. This theory also is inadequate to support standing in the instant case. The relief sought and obtained by the plaintiffs left the defendants two choices: they could revise their figures and receive their grants, or they could refuse to comply and forfeit their grants. Inasmuch as the first alternative would produce no benefit for plaintiffs, it is immaterial whether they might benefit from the second—at least absent a "substantial probability" that the second alternative will in fact be chosen. *Warth* v. *Seldin, supra,* 422 U.S. at 504. Here, there was not the slightest showing that any of the defendant towns would choose to forfeit their grants rather than modify their applications.[a]

And see footnote 3.

D. No Evidence To Support Standing

Thus, the record in this case is devoid of a scintilla of evidence to support the theory that the City of Hartford suffered any personal injury resulting in any concrete, demonstrable way from HUD's or the towns' alleged statutory infractions. Such problems as Hartford may have, in common with many other American cities, long antedated the applications of these towns, or even the passage of the Act. There is no evidence that but for the towns' failure to include a different "expected to reside" figure, Hartford's lot would be any different. There is no evidence that the court's intervention would personally benefit Hartford in any tangible way. And clearly, of course, Hartford cannot sue as *parens patriae.* See, e.g.,

Com. of Pa., by Shapp v. *Kleppe,* 533 F. 2d 668 (D.C. Cir.; 1976), cert. den., 45 U.S.L.W. 3396 (Nov. 30, 1976); and *California* v. *Auto Manufacturers Association, Inc. (In Re Multidistrict Vehicle Air Pollution M. D.L. No. 31),* 481 F. 2d 122, 131 (CA-9; 1973), cert. den. 414 U.S. 1045 (1973).

Thus, in this case that went to a full trial on the merits, plaintiffs have completely failed to satisfy their burden of proving Hartford has standing.

E. The Individual Plaintiffs

In light of the foregoing, the discussion of the standing of Mrs. Jordan and Mrs. Mauldin may be much briefer. For clearly, the suggestion that these individual Hartford residents might derive "tangible benefits" from reallocation of funds to Hartford is infected with the same infirmity as the suggestion that Hartford could gain standing in that way. We have demonstrated above that factually, legally and logically the notion is chimerical and will not withstand scrutiny.

As for other grounds of standing, there are none. These two women do not work in the three defendant towns and do not claim they do or ever will. They would thus not be among those includible in the "expected to reside" category of any of these towns' applications. If the applications were amended, it would have no effect on these plaintiffs, for they would neither be working nor living in the towns where the community development projects would be built. If the applications are not amended and the towns proceed under their original plans, it will equally have no effect on these plaintiffs, who will not be working or living there. Indeed, while it has almost automatically been stated that these plaintiffs live in substandard housing in Hartford, the record is barren of any claim or evidence as to the quality of plaintiffs' present housing. Plaintiff Jordan had been living in Hartford since well before enactment of the Act. Plaintiff Mauldin moved to Hartford a month before

the Meeker Memorandum was issued permitting the towns to do what they did, and she moved to Hartford for family reasons totally unconnected with the Act or the defendants. These plaintiffs do not even allege that they would like to live in or work in or visit the defendant towns—even if such desires were relevant under the Act, which they are not.

Thus, their position is no different from that of appellants in *Evans* v. *Lynn* (at 590):

> [They] do not reside in the Town. They make no claim that they have ever sought or been refused housing in the Town. They have no interest in any Town property, or connection with any past or proposed housing project in the Town. They do not allege that either of the challenged projects will discriminate against them. They make no claim that the federal funds were diverted from any actual or proposed housing project that could have been of benefit to them. In short, they allege no specific, personal, adverse results whatsoever from the grants for sewer and park construction.

The Act, properly understood, eliminates any standing of the individual plaintiffs Jordan and Mauldin. Neither are they in the zone of interests protected by the Act nor can they allege any injury in fact. The Court's intervention will confer on them no tangible personal benefit. They have no standing.

F. Who Would Have Standing?

Having demonstrated that the law and the record in this case afford no support for the standing of *these* plaintiffs on *these* facts in *this* case under *this* Act, respondents have done what they are required to do, and can close. They are not content to do so, however; for they wish to ensure that this Court does not misconstrue their argument as meaning

no one has any standing to challenge what petitioners say was done here. Proper parties, they submit, would have standing; and at oral argument below they hypothecated just such parties. In response to a question from Judge Meskill as to who *would* have standing here, counsel for appellants responded, in substance: any "lower income person" residing in the town, or one who lived outside the town but worked in the town or was going to be working in the town. These sorts of people, counsel stated, clearly are those "residing in or expected to reside in" the town who would be affected, who arguably would suffer direct, personal injury from any statutory infractions, who would or could receive tangible personal benefits from court intervention.

On January 11, 1977, this Court, in its most recent standing opinion, found just such a person to possess the requisite standing. In *Village of Arlington Heights* v. *Metropolitan Housing Development Corporation,* 45 U.S.L.W. 4073, a case involving, *inter alia,* racial discrimination, petitioners challenged the standing of the individual plaintiffs. One of them was a man named Ransom. In finding Ransom did have standing, the Court stated as follows:

> Respondent Ransom, a Negro, works at the Honeywell factory in Arlington Heights and lives approximately 20 miles away in Evanston in a 5-room house with his mother and his son. The complaint alleged that he seeks and would qualify for the housing MHDC wants to build in Arlington Heights. Ransom testified at trial that if Lincoln Green were built he would probably move there, since it is closer to his job.
>
> The injury Ransom asserts is that his quest for housing nearer his employment has been thwarted by official action that is racially discriminatory. If a court grants the relief he seeks, there is at least a

> "substantial probability" *Warth* v. *Seldin,* 422 U.S., at 504, tha' the Lincoln Green project will materialize, affording Ransom the housing opportunity he desires in Arlington Heights. His is not a generalized grievance. Instead, as we suggested in *Warth, id.,* at 507, 508 n. 18, it focuses on a particular project and is not dependent on speculation about the possible actions of third parties not before the court. See *id.,* at 505; *Simon* v. *Eastern Kentucky Welfare Rights Org.,* 426 U.S. at 41-42. Unlike the individual plaintiffs in *Warth,* Ransom had adequately averred an "actionable causal relationship" between Arlington Heights' zoning practices and his asserted injury. *Warth* v. *Seldin,* 422 U.S., at 507. We therefore proceed to the merits.
>
> *Id.,* at 4077

(In the preceding paragraph, the court also reiterated that "In the ordinary case, a party is denied standing to assert the rights of third persons." *Id.,* at 4076).

We have no Ransom in the case at bar. If we did, he would have standing. What we have are two Hartford residents who claim no connection whatsoever with the three defendant towns whose applications they seek to affect. They do not and will not work there. They do not and will not live there. What is done there can and will have no effect upon them. They have no standing.

Conclusion

Petitioners' theory of standing upon further examination boils down to the simplistic proposition that because someone must have standing, these petitioners have standing. Logic and the law refute that argument. Contrary, too, to what petitioners claim, the Second Circuit has erected no standing test of a "conclusive showing" or a "near certainty". All the Second Circuit has done—and all this Court has done—is to require that before a person

may invoke the machinery of the courts to hear his complaint he must show at least that the injury he alleges is "fairly traceable" to defendants' acts or omissions, that there is a "substantial probability" that absent those acts or omissions plaintiff would not have suffered this particular injury, and that the relief plaintiff requests, if granted, will redress that injury. *Warth* v. *Seldin*, 422 U.S. 490, 504 (1975); *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 45 U.S.L.W. 4073, 4076 (1977). There may well be persons who can show these things in this case. All the Court of Appeals has found is that these particular plaintiffs cannot and—more importantly—after a full hearing on the merits, *did not*.

Petitioners note that HUD has already amended its regulations in a variety of respects. Thus, the regulations considered by the trial court in significant part have been superseded. The Meeker Memorandum that gave rise to this suit has long since, by its own terms, been interred, and there is no reason to believe that it will be resurrected. The lack of methodology to compute the expected to reside figures has in large part been cured by the passage of time and the consequent experience with this novel concept. Almost all the funds in this case have already been disbursed and spent. The decision below is in harmony, not in conflict, with all other decisions on standing and does not pretend to go beyond that limited issue to decide the meaning of the operative terms of the Housing and Community Development Act of 1974. It leaves the door to that task open to persons with proper standing.

Thus, the preconditions set forth in this Court's Rule 19(b) simply do not exist in the case at bar. The decision below is as one with the decisions of this Court that form its firm foundation.

The petition for writ of certiorari should be denied.

Respectfully submitted,

RALPH G. ELLIOT
Alcorn, Bakewell & Smith
One American Row
Hartford, Connecticut 06103
Counsel for Respondent Town of Glastonbury

JOHN J. LANGENBACH
Town Hall
West Hartford, Connecticut 06107
Counsel for Respondent Town of West Hartford

JAMES A. WADE
799 Main Street
Hartford, Connecticut 06103
Counsel for Respondent Town of East Hartford